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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SABRINA STEWART, individually
and on behalf of all others similarly
situated,

Plaintiff,

) Case No.
)
) **CLASS ACTION**
)
) **COMPLAINT FOR VIOLATIONS**
) **OF:**

vs.	)	1.	NEGLIGENT VIOLATIONS
	)		OF THE TELEPHONE
EBT ADVERTISING LLC, and DOES	)		CONSUMER PROTECTION
1 through 10, inclusive, and each of	)	2.	ACT [47 U.S.C. §227(b)]
them,	)		WILLFUL VIOLATIONS
	)		OF THE TELEPHONE
	)		CONSUMER PROTECTION
Defendant.	)	3.	ACT [47 U.S.C. §227(b)]
	)		NEGLIGENT VIOLATIONS
	)		OF THE TELEPHONE
	)		CONSUMER PROTECTION
	)		ACT [47 U.S.C. §227(c)]
	)	4.	WILLFUL VIOLATIONS
	)		OF THE TELEPHONE
	)		CONSUMER PROTECTION
	)		ACT [47 U.S.C. §227(c)]

DEMAND FOR JURY TRIAL

1 Plaintiff SABRINA STEWART ("Plaintiff"), individually and on behalf of
2 all others similarly situated, alleges the following upon information and belief
3 based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of EBT ADVERTISING LLC
8 ("Defendant"), in negligently, knowingly, and/or willfully contacting Plaintiff on
9 Plaintiff's cellular telephone in violation of the Telephone Consumer Protection
10 Act, 47 U.S.C. § 227 *et seq.* ("TCPA") and related regulations, specifically the
11 National Do-Not-Call provisions, thereby invading Plaintiff's privacy.

12 **JURISDICTION & VENUE**

13 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
14 a resident of California, seeks relief on behalf of a Class, which will result in at
15 least one class member belonging to a different state than that of Defendant, a
16 Florida company. Plaintiff also seeks up to \$1,500.00 in damages for each call in
17 violation of the TCPA, which, when aggregated among a proposed class in the
18 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
19 Therefore, both diversity jurisdiction and the damages threshold under the Class
20 Action Fairness Act of 2005 ("CAFA") are present, and this Court has jurisdiction.

21 3. Venue is proper in the United States District Court for the Central
22 District of California pursuant to 28 U.S.C. 1391(b) and because Defendant does
23 business within the State of California and Plaintiff resides within the County of
24 Los Angeles.

25 **PARTIES**

26 4. Plaintiff, SABRINA STEWART ("Plaintiff"), is a natural person
27 residing in Long Beach, California and is a "person" as defined by 47 U.S.C. § 153
28 (39).

1 5. Defendant, EBT ADVERTISING LLC (“Defendant”) is timeshare
2 resale and rental marketing limited liability company, and is a “person” as defined
3 by 47 U.S.C. § 153 (39).

4 6. The above named Defendant, and its subsidiaries and agents, are
5 collectively referred to as “Defendants.” The true names and capacities of the
6 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
7 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
8 names. Each of the Defendants designated herein as a DOE is legally responsible
9 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
10 Complaint to reflect the true names and capacities of the DOE Defendants when
11 such identities become known.

12 7. Plaintiff is informed and believes that at all relevant times, each and
13 every Defendant was acting as an agent and/or employee of each of the other
14 Defendants and was acting within the course and scope of said agency and/or
15 employment with the full knowledge and consent of each of the other Defendants.
16 Plaintiff is informed and believes that each of the acts and/or omissions complained
17 of herein was made known to, and ratified by, each of the other Defendants.

18 **FACTUAL ALLEGATIONS**

19 8. Beginning in or around June 2018, Defendant contacted Plaintiff on
20 Plaintiff’s cellular telephone number ending in -6357, in an attempt to solicit
21 Plaintiff to purchase Defendant’s services.

22 9. Defendant used an “automatic telephone dialing system” as defined
23 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

24 10. Defendant contacted or attempted to contact Plaintiff from telephone
25 numbers (407) 574-8064 and (407) 394-1498.

26 11. Defendant’s calls constituted calls that were not for emergency
27 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

28 12. During all relevant times, Defendant did not possess Plaintiff’s “prior

1 express consent” to receive calls using an automatic telephone dialing system or an
2 artificial or prerecorded voice on her cellular telephone pursuant to 47 U.S.C. §
3 227(b)(1)(A).

4 13. Further, Plaintiff’s cellular telephone number ending in -6357 was
5 added to the National Do-Not-Call Registry on or about December 11, 2015.

6 14. Defendant placed multiple calls soliciting its business to Plaintiff on
7 her cellular telephone ending in -6357 in or around June 2018.

8 15. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
9 64.1200(c)(2) as they were attempts to promote or sell Defendant’s services.

10 16. Plaintiff received numerous solicitation calls from Defendant within a
11 12-month period.

12 17. Plaintiff requested for Defendant to stop calling Plaintiff during
13 multiple of the initial calls from Defendant, thus revoking any prior express consent
14 that had existed and terminating any established business relationship that had
15 existed, as defined under 16 C.F.R. 310.4(b)(1)(iii)(B).

16 18. Despite this, Defendant continued to call Plaintiff in an attempt to
17 solicit its services and in violation of the National Do-Not-Call provisions of the
18 TCPA.

19 19. Upon information and belief, and based on Plaintiff’s experiences of
20 being called by Defendant after requesting they stop calling, and at all relevant
21 times, Defendant failed to establish and implement reasonable practices and
22 procedures to effectively prevent telephone solicitations in violation of the
23 regulations prescribed under 47 U.S.C. § 227(c)(5).

24 **CLASS ALLEGATIONS**

25 20. Plaintiff brings this action individually and on behalf of all others
26 similarly situated, as a member the four proposed classes (hereafter, jointly, “The
27 Classes”). The class concerning the ATDS claim for no prior express consent
28 (hereafter “The ATDS Class”) is defined as follows:

1 All persons within the United States who received any
2 solicitation/telemarketing telephone calls from
3 Defendant to said person's cellular telephone made
4 through the use of any automatic telephone dialing
5 system or an artificial or prerecorded voice and such
6 person had not previously consented to receiving such
7 calls within the four years prior to the filing of this
8 Complaint

9 21. The class concerning the ATDS claim for revocation of consent, to the
10 extent prior consent existed (hereafter "The ATDS Revocation Class") is defined
11 as follows:

12 All persons within the United States who received any
13 solicitation/telemarketing telephone calls from
14 Defendant to said person's cellular telephone made
15 through the use of any automatic telephone dialing
16 system or an artificial or prerecorded voice and such
17 person had revoked any prior express consent to receive
18 such calls prior to the calls within the four years prior to
19 the filing of this Complaint.

20 22. The class concerning the National Do-Not-Call violation (hereafter
21 "The DNC Class") is defined as follows:

22 All persons within the United States registered on the
23 National Do-Not-Call Registry for at least 30 days, who
24 had not granted Defendant prior express consent nor had
25 a prior established business relationship, who received
26 more than one call made by or on behalf of Defendant
27 that promoted Defendant's products or services, within
28 any twelve-month period, within four years prior to the
filing of the complaint.

29 23. The class concerning the National Do-Not-Call violation following
30 revocation of consent and prior business relationship, to the extent they existed

1 (hereafter “The DNC Revocation Class”) is defined as follows:

2 All persons within the United States registered on the
3 National Do-Not-Call Registry for at least 30 days, who
4 received more than one call made by or on behalf of
5 Defendant that promoted Defendant’s products or
6 services, after having revoked consent and any prior
7 established business relationship, within any twelve-
8 month period, within four years prior to the filing of the
9 complaint.

9 24. Plaintiff represents, and is a member of, The ATDS Class, consisting
10 of all persons within the United States who received any solicitation telephone calls
11 from Defendant to said person’s cellular telephone made through the use of any
12 automatic telephone dialing system or an artificial or prerecorded voice and such
13 person had not previously not provided their cellular telephone number to
14 Defendant within the four years prior to the filing of this Complaint.

15 25. Plaintiff represents, and is a member of, The ATDS Revocation Class,
16 consisting of all persons within the United States who received any
17 solicitation/telemarketing telephone calls from Defendant to said person’s cellular
18 telephone made through the use of any automatic telephone dialing system or an
19 artificial or prerecorded voice and such person had revoked any prior express
20 consent to receive such calls prior to the calls within the four years prior to the
21 filing of this Complaint.

22 26. Plaintiff represents, and is a member of, The DNC Class, consisting
23 of all persons within the United States registered on the National Do-Not-Call
24 Registry for at least 30 days, who had not granted Defendant prior express consent
25 nor had a prior established business relationship, who received more than one call
26 made by or on behalf of Defendant that promoted Defendant’s products or services,
27 within any twelve-month period, within four years prior to the filing of the
28 complaint.

1 27. Plaintiff represents, and is a member of, The DNC Revocation Class,
2 consisting of all persons within the United States registered on the National Do-
3 Not-Call Registry for at least 30 days, who received more than one call made by or
4 on behalf of Defendant that promoted Defendant's products or services, after
5 having revoked consent and any prior established business relationship, within any
6 twelve-month period, within four years prior to the filing of the complaint.

7 28. Defendant, its employees and agents are excluded from The Classes.
8 Plaintiff does not know the number of members in The Classes, but believes the
9 Classes members number in the thousands, if not more. Thus, this matter should
10 be certified as a Class Action to assist in the expeditious litigation of the matter.

11 29. The Classes are so numerous that the individual joinder of all of its
12 members is impractical. While the exact number and identities of The Classes
13 members are unknown to Plaintiff at this time and can only be ascertained through
14 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
15 The Classes includes thousands of members. Plaintiff alleges that The Classes
16 members may be ascertained by the records maintained by Defendant.

17 30. Plaintiff and members of The ATDS Class and The ATDS Revocation
18 Class were harmed by the acts of Defendant in at least the following ways:
19 Defendant illegally contacted Plaintiff and ATDS Class members via their cellular
20 telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class
21 members to incur certain charges or reduced telephone time for which Plaintiff and
22 ATDS Class and ATDS Revocation Class members had previously paid by having
23 to retrieve or administer messages left by Defendant during those illegal calls, and
24 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class
25 members.

26 31. Common questions of fact and law exist as to all members of The
27 ATDS Class which predominate over any questions affecting only individual
28 members of The ATDS Class. These common legal and factual questions, which

1 do not vary between ATDS Class members, and which may be determined without
2 reference to the individual circumstances of any ATDS Class members, include,
3 but are not limited to, the following:

- 4 a. Whether, within the four years prior to the filing of this
5 Complaint, Defendant made any telemarketing/solicitation call
6 (other than a call made for emergency purposes or made with
7 the prior express consent of the called party) to a ATDS Class
8 member using any automatic telephone dialing system or any
9 artificial or prerecorded voice to any telephone number
10 assigned to a cellular telephone service;
- 11 b. Whether Plaintiff and the ATDS Class members were damaged
12 thereby, and the extent of damages for such violation; and
- 13 c. Whether Defendant should be enjoined from engaging in such
14 conduct in the future.

15 32. As a person that received numerous telemarketing/solicitation calls
16 from Defendant using an automatic telephone dialing system or an artificial or
17 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
18 claims that are typical of The ATDS Class.

19 33. Common questions of fact and law exist as to all members of The
20 ATDS Revocation Class which predominate over any questions affecting only
21 individual members of The ATDS Revocation Class. These common legal and
22 factual questions, which do not vary between ATDS Revocation Class members,
23 and which may be determined without reference to the individual circumstances of
24 any ATDS Revocation Class members, include, but are not limited to, the
25 following:

- 26 a. Whether, within the four years prior to the filing of this
27 Complaint, Defendant made any telemarketing/solicitation call
28 (other than a call made for emergency purposes or made with

the prior express consent of the called party) to an ATDS Revocation Class member, who had revoked any prior express consent to be called using an ATDS, using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;

b. Whether Plaintiff and the ATDS Revocation Class members were damaged thereby, and the extent of damages for such violation; and

c. Whether Defendant should be enjoined from engaging in such conduct in the future.

34. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff is asserting claims that are typical of The ATDS Revocation Class.

35. Plaintiff and members of The DNC Class and DNC Revocation Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and DNC Class and DNC Revocation Class members via their telephones for solicitation purposes, thereby invading the privacy of said Plaintiff and the DNC Class and DNC Revocation Class members whose telephone numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class and DNC Revocation Class members were damaged thereby.

36. Common questions of fact and law exist as to all members of The DNC Class which predominate over any questions affecting only individual members of The DNC Class. These common legal and factual questions, which do not vary between DNC Class members, and which may be determined without reference to the individual circumstances of any DNC Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant or its agents placed more than one solicitation call to the members of the DNC Class whose telephone numbers were on the National Do-Not-Call Registry and who had not granted prior express consent to Defendant and did not have an established business relationship with Defendant;
- b. Whether Defendant obtained prior express written consent to place solicitation calls to Plaintiff or the DNC Class members' telephones;
- c. Whether Plaintiff and the DNC Class member were damaged thereby, and the extent of damages for such violation; and
- d. Whether Defendant and its agents should be enjoined from engaging in such conduct in the future.

37. As a person that received numerous solicitation calls from Defendant within a 12-month period, who had not granted Defendant prior express consent and did not have an established business relationship with Defendant, Plaintiff is asserting claims that are typical of the DNC Class.

38. Common questions of fact and law exist as to all members of The DNC Class which predominate over any questions affecting only individual members of The DNC Revocation Class. These common legal and factual questions, which do not vary between DNC Revocation Class members, and which may be determined without reference to the individual circumstances of any DNC Revocation Class members, include, but are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant or its agents placed more than one solicitation call to the members of the DNC Class whose telephone numbers were on the National Do-Not-Call Registry

1 and who had revoked any prior express consent and any
2 established business relationship with Defendant;

3 b. Whether Plaintiff and the DNC Class member were damaged
4 thereby, and the extent of damages for such violation; and

5 c. Whether Defendant and its agents should be enjoined from
6 engaging in such conduct in the future.

7 39. As a person that received numerous solicitation calls from Defendant
8 within a 12-month period, who, to the extent one existed, had revoked any prior
9 express consent and any established business relationship with Defendant, Plaintiff
10 is asserting claims that are typical of the DNC Revocation Class.

11 40. Plaintiff will fairly and adequately protect the interests of the members
12 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
13 class actions.

14 41. A class action is superior to other available methods of fair and
15 efficient adjudication of this controversy, since individual litigation of the claims
16 of all Classes members is impracticable. Even if every Classes member could
17 afford individual litigation, the court system could not. It would be unduly
18 burdensome to the courts in which individual litigation of numerous issues would
19 proceed. Individualized litigation would also present the potential for varying,
20 inconsistent, or contradictory judgments and would magnify the delay and expense
21 to all parties and to the court system resulting from multiple trials of the same
22 complex factual issues. By contrast, the conduct of this action as a class action
23 presents fewer management difficulties, conserves the resources of the parties and
24 of the court system, and protects the rights of each Classes member.

25 42. The prosecution of separate actions by individual Classes members
26 would create a risk of adjudications with respect to them that would, as a practical
27 matter, be dispositive of the interests of the other Classes members not parties to
28 such adjudications or that would substantially impair or impede the ability of such

1 non-party Class members to protect their interests.

2 43. Defendant has acted or refused to act in respects generally applicable
3 to The Classes, thereby making appropriate final and injunctive relief with regard
4 to the members of the Classes as a whole.

5 **FIRST CAUSE OF ACTION**

6 **Negligent Violations of the Telephone Consumer Protection Act**

7 **47 U.S.C. §227(b).**

8 **On Behalf of the ATDS Class and ATDS Revocation Class**

9 44. Plaintiff repeats and incorporates by reference into this cause of action
10 the allegations set forth above at Paragraphs 1-43.

11 45. The foregoing acts and omissions of Defendant constitute numerous
12 and multiple negligent violations of the TCPA, including but not limited to each
13 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
14 *47 U.S.C. § 227 (b)(1)(A)*.

15 46. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
16 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
17 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

18 47. Plaintiff and the ATDS Class and ATDS Revocation Class members
19 are also entitled to and seek injunctive relief prohibiting such conduct in the future.

20 **SECOND CAUSE OF ACTION**

21 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

22 **Act**

23 **47 U.S.C. §227(b)**

24 **On Behalf of the ATDS Class and the ATDS Revocation Class**

25 48. Plaintiff repeats and incorporates by reference into this cause of action
26 the allegations set forth above at Paragraphs 1-43.

27 49. The foregoing acts and omissions of Defendant constitute numerous
28 and multiple knowing and/or willful violations of the TCPA, including but not

1 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
 2 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

3 50. As a result of Defendant's knowing and/or willful violations of *47*
 4 *U.S.C. § 227(b)*, Plaintiff and the ATDS Class and ATDS Revocation Class
 5 members are entitled an award of \$1,500.00 in statutory damages, for each and
 6 every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

7 51. Plaintiff and the Class members are also entitled to and seek injunctive
 8 relief prohibiting such conduct in the future.

9 **THIRD CAUSE OF ACTION**

10 **Negligent Violations of the Telephone Consumer Protection Act**

11 **47 U.S.C. §227(c)**

12 **On Behalf of the DNC Class and the DNC Revocation Class**

13 52. Plaintiff repeats and incorporates by reference into this cause of action
 14 the allegations set forth above at Paragraphs 1-43.

15 53. The foregoing acts and omissions of Defendant constitute numerous
 16 and multiple negligent violations of the TCPA, including but not limited to each
 17 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular
 18 *47 U.S.C. § 227 (c)(5)*.

19 54. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,
 20 Plaintiff and the DNC Class and DNC Revocation Class Members are entitled an
 21 award of \$500.00 in statutory damages, for each and every violation, pursuant to
 22 *47 U.S.C. § 227(c)(5)(B)*.

23 55. Plaintiff and the DNC Class and DNC Revocation Class members are
 24 also entitled to and seek injunctive relief prohibiting such conduct in the future.

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FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class and DNC Revocation Class

56. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-43.

57. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(c), in particular 47 U.S.C. § 227 (c)(5).

58. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class and DNC Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

59. Plaintiff and the DNC Class and DNC Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(c)(5).
- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class and DNC Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

1 60. Pursuant to the Seventh Amendment to the Constitution of the United
2 States of America, Plaintiff is entitled to, and demands, a trial by jury.

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5 Respectfully Submitted this 21st Day of September, 2018.

6 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

7 By: /s/ Todd M. Friedman

8 Todd M. Friedman

9 Law Offices of Todd M. Friedman

10 Attorney for Plaintiff
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